91-1551

No.

Supreme Court, U.S.
FILED
MAR 27 1992
OFFICE OF THE CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

ELLIS MOSES AYERS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the absence at trial of the seal provided for by subsection 8(a) of 18 U.S.C. § 2518, or any explanation for its absence, render such recordings, and any evidence derived therefrom, inadmissible? *United States v. Rios*, 495 U.S. 1845 (1990).

2. May an Assistant U.S. Attorney, investigating federal crimes, bypass 18 U.S.C. § 2516 and the rule laid down in *United States v. Giordano*, 416 U.S. 505 (1974) (i.e., that only the Attorney General may authorize a Title III wiretap application), by colluding with a state prosecutor to get a sham state tap, *seemingly* seeking evidence of state crimes, who then turns the fruit of the tap over to the Assistant U.S. Attorney, for prosecution of federal crimes—crimes which he had been investigating all along?

3. Was the failure to serve upon petitioner, within a reasonable time but not later than ninety days after termination of the order approving interception of his conversations, an inventory which included notice that, *inter alia*, during the tap his communications had been intercepted, a violation of 18 U.S.C. § 2518 (8)(d), the Fourth Amendment to the United States Constitution and the rationale of *Berger v. New York*, 87 S. Ct. 1873, 388 U.S. 41 (1967), *Katz v. United States*, 88 S. Ct. 507, 389 U.S. 347 (1967) and the explicit holding of *United States v. Donovan*, 429 U.S. 413, 430 (1977)?

4. Was the use, by the United States, of the evidence gathered against petitioner during State authorized wiretap seeking evidence of State crimes, in a federal prosecution for Federal violations, without prior judicial approval and without a finding by a judge, on subsequent application, that the contents were otherwise intercepted in accordance with Title III of the Omnibus Crime Control and Safe Streets Act of 1968, a violation of 18 U.S.C.

§ 2517 and the Fourth Amendment to the United States Constitution?

5. Did the trial court violate Title III and the Fourth Amendment to the United States Constitution when it dismissed, without a hearing, petitioner's motion, filed a week before trial, to suppress the evidence gathered during the state wiretap.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

NO.

ELLIS MOSES AYERS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

PETITION FOR A WRIT OF CERTIORARI

PRELIMINARY STATEMENT

Ellis Moses Ayers, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eleventh Circuit, entered on the 27th day of November 1991, summarily affirming petitioner's conviction.

OPINIONS BELOW

The judgment of conviction was affirmed, without opinion, on the 27th day of November 1991. (1a) Petitioner's motion for rehearing was denied on the 30th day of December 1991. (2a)

JURISDICTION AND TIMELINESS

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

The judgment of conviction was affirmed, without opinion, on the 27th day of November 1991. Petitioner's motion for rehearing was denied on the 30th day of December 1991.

CONSTITUTIONAL PROVISION INVOLVED

Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATUTES INVOLVED

Official Code of Georgia Annotated (O.C.G.A.) § 16-12-22, in pertinent part, provides:

> *Commercial Gambling*—A person commits the offense of commercial gambling when he intentionally . . .
>
> (1) operates or participates in the earnings of a gambling place.
>
> . . . . .

O.C.G.A. § 16-12-28, in pertinent part, provides:

> *Communicating Gambling* definition
>
> (a) a person who knowingly communicates information as to bets, betting odds, or changes in betting odds . . . with the intent to further gambling commits the offense of communicating gambling information.
>
> . . . . .

18 U.S.C. § 2516, in pertinent part, provides:

> (1) The Attorney General, Deputy Attorney General . . . may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with Section 2518 of this chapter an order authorizing or approving the interception of the offenses as to which the application is made, when such interception may provide or has provided evidence of— . . . section 1084 (transmission of wagering information), . . . section 1955 (prohibition of business enterprises of gambling), ...
>
> . . . . .

18 U.S.C. § 2517, in pertinent part, provides:

> (5) when an investigative or law enforcement officer, while engaged in intercepting wire, oral, or electronic communications in the manner authorized herein, intercepts wire, oral, or electronic communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used . . . under subsection (3) of this section when authorized or approved by a judge of competent jurisdiction where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. Such application shall be made as soon as practicable.
>
> . . . . .

18 U.S.C. § 2518(8)(a) in pertinent part provides:

> The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, oral, or electronic communication or evidence derived therefrom under subsection (3) of section 2517.
>
> . . . . .

18 U.S.C. § 2518(8)(d) in pertinent part provides:

> Within a reasonable time but not later than ninety days after the filing of an application for an order of approval under Section 2518 (7)(b) which is denied or the termination of the period of an order or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion that is in the interest of justice, an inventory which shall include notice of—
>
> (1) the fact of the entry of the order or the application;
>
> (2) the date of the entry and the period of authorized, approved or disapproved interception, or the denial of the application; and
>
> (3) the fact that during the period wire, oral, or electronic communications were or were not intercepted.
>
> . . . . .

18 U.S.C. 2518(10)(a), in pertinent part, provides:

> Any aggrieved person . . . may move to suppress. Such motion shall be made *before trial* . . . unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion." (Emphasis added.)
>
> . . . . .

United States v. Rios, 495 U.S. 1845 (1990)

United States v. Giordano, 416 U.S. 505 (1974)

United States v. Donovan, 429 U.S. 413, 430 (1977)

Berger v. New York, 87 S. Ct. 1873, 388 U.S. 41 (1967)

Katz v. United States, 88 S. Ct. 507, 389 U.S. 347 (1967)

. . . . .

Omnibus Crime Control and Safe Streets Act of 1968, Stat. 211-225, 18 U.S.C. §§ 2510-2520.

STATEMENT OF THE CASE

In 1987, an Assistant United States Attorney (AUSA) in Atlanta, Georgia, using Internal Revenue Service (IRS) and Federal Bureau of Investigation (FBI) agents, and State law enforcement officials, launched an IRS investigation of petitioner, Ellis Moses Ayers, and other gamblers in Georgia.

After extensive investigation which involved, *inter alia*, applications to the U.S. District Court for installation of pen registers, the AUSA got the State District Attorney to apply to a State judge for an order authorizing installation of a State wiretap.

The District Attorney did so.

He avowed that the objective of the wiretap was to investigate and gather evidence of State gambling-related violations, so that the State might prosecute under O.C.G.A. §§ 16-12-22 and 16-12-28.

The declaration was false. The real objective—indeed, the only objective—was to gather evidence of Federal tax and gambling violations to be prosecuted by the Federal government.

Notwithstanding that this was, from beginning to end, a Federal operation, the AUSA did not seek, nor did the United States Attorney General authorize, in conformity with 18 U.S.C. § 2516, an application to be made to a Federal judge for an order authorizing or approving installation of a Federal wiretap to investigate and gather evidence of Federal crimes.

Notwithstanding that petitioner, Ellis Moses Ayers, was a named target of the State wiretap he was never served with a post-tap inventory (as required by 18 U.S.C. § 2518(8)(d)), which included notice that during the surveillance, his communications had been intercepted.

The AUSA cranked up a Federal grand jury to investigate "individuals involved in a major bookmaking oper-

ation in the metro-Atlanta area." Petitioner was one of the targets of the grand jury's inquest.

After the State wiretap was terminated, the entire fruit of the tap was turned over to the Federal government.

The AUSA did not seek post-tap authorization to use, in a Federal tax and 18 U.S.C. § 1955 prosecution, the evidence gathered under a State warrant authorizing surveillance for and seizure of local gambling-related offenses, as mandated by 18 U.S.C. § 2517(5).

Ayers was never arrested, much less indicted, by the State of Georgia.

About a week before Ayers's trial was scheduled to begin, he filed a motion to suppress in which he sought a hearing. The motion was denied, without a hearing, on the ground that it was untimely filed.

Throughout the trial Ayers objected to the playing of the tapes of the recorded conversations on two grounds: (1) The government made no showing of immediate sealing of the recordings upon expiration of the electronic surveillance order; (2) Nor was any tape of the recorded conversations festooned with any seal, judicial or otherwise.

REASONS FOR GRANTING THE WRIT

Congress prescribed in Title III of the Omnibus Crime Control and Safe Streets Act of 1968, Stat. 211-225, 18 U.S.C. §§ 2510-2520, precise and discriminating procedures for securing judicial authorization to conduct wiretapping in the investigation of specified serious crimes.

The decision below makes a shambles of that statutory scheme, erodes the Fourth Amendment's concern for privacy, conflicts with decisions of the Second [1] and Seventh [2] Circuits, and is in direct and irrefutable conflict with the following decisions of this Court:

---

[1] *United States v. Marion*, 535 F.2d 697 (2nd Cir. 1976).

[2] *United States v. Brodson*, 528 F.2d 214 (7th Cir. 1975).

Berger v. New York, 87 S. Ct. 1873, 388 U.S. 41 (1967);

Katz v. United States, 88 S. Ct. 507, 389 U.S. 347 (1967);

United States v. Donovan, 429 U.S. 413, 430 (1977);

United States v. Giordano, 416 U.S. 505 (1974);

United States v. Rios, 495 U.S. 1845 (1990).

The decision below not only mocks controlling authority, it disembowels Title III. If it stands uncorrected, Orwell's bleak prophecy will loom boldly.

If Title III is to be interred, it ought to be done by this Court—not by summary affirmance.

CONCLUSION

Wherefore, petitioner respectfully prays that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

HERBERT SHAFER
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(404) 266-8827
Attorney for Petitioner

APPENDIX

APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 90-8975
Non-Argument Calendar

D. C. Docket No. CR89-356A-2

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

ELLIS M. AYERS,
JOHN LESTER ELLENBURG,
Defendants-Appellants.

Appeals from the United States District Court
for the Northern District of Georgia

(November 27, 1991)

Before TJOFLAT, Chief Judge, HATCHETT, and DUBINA, Circuit Judges.

PER CURIAM:

AFFIRMED. *See* 11th Cir. R. 36-1.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 90-8975

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

ELLIS M. AYERS,
JOHN LESTER ELLENBURG,
Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Georgia

ON PETITIONS(S) FOR REHEARING

(December 30, 1991)

BEFORE: TJOFLAT, Chief Judge, HATCHETT and DUBINA, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by appellant, Ellis M. Ayers, is denied.

ENTERED FOR THE COURT:

/s/ [Illegible]
Chief Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CR 89-356A

UNITED STATES OF AMERICA,

v.

JOHN LESTER ELLENBURG, a/k/a Lester Ellenburg,
ELLIS M. AYERS, and RICHARD M. PIERCE,
a/k/a Tennessee

CRIMINAL INDICTMENT

[Filed Sep. 20, 1989]

THE GRAND JURY CHARGES:

COUNT ONE

Between on or about July, 1987 and November 23, 1987, the exact dates being unknown to the Grand Jury, in the Northern District of Georgia and elsewhere, the defendants, JOHN LESTER ELLENBURG, a/k/a Lester Ellenburg, ELLIS M. AYERS, and RICHARD M. PIERCE, a/k/a Tennessee, willfully, knowingly, and unlawfully did combine, conspire, agree, and have a tacit understanding with each other and others not named as defendants herein to commit the following offenses against the United States:

A. To conduct, finance, manage, supervise, direct and own all or part of an illegal gambling business as defined in Title 18, United States Code, Section 1955 (b) (1), in violation of Title 18, United States Code, Section 1955.

B. To willfully attempt to evade or defeat the wagering excise tax, in violation of Title 26, United States Code, Section 7201.

C. To willfully fail to make a Form 11-C (Special Tax Return and Application for Registry-Wagering), also known as a wagering occupational tax return, in violation of Title 26, United States Code, Section 7203.

In furtherance of the conspiracy set forth above, and in order to effect the purposes and objects thereof, the conspirators, as well as others not named as defendants herein, did commit overt acts in the Northern District of Georgia and elsewhere, including but not limited to the following:

OVERT ACTS

1. On or about July 24, 1987, Claudia Grenier leased an apartment at 835 Briar Creek Court, Conyers, Georgia.

2. On or about July 24, 1987, Krste Mizemakoski leased an apartment at 829 Briar Creek Court, Conyers, Georgia.

3. On or about August 5, 1987, Claudia Grenier obtained telephone service on telephone numbers (404) 388-0566 and (404) 388-0274 at 835 Briar Creek Court, Conyers, Georgia.

4. On or about August 5, 1987, a telephone call was placed from (404) 388-0566 to (404) 976-5000 listed to Atlanta Sports Line.

5. On or about September 13, 1987, a telephone call was placed from (404) 388-0566 to (404) 976-5000 listed to Atlanta Sports Line.

6. On or about September 14, 1987, a bettor telephoned (404) 388-0274 and left a message for LESTER ELLENBURG to return his call. ELLENBURG then returned the call and gambling activity was discussed.

7. On or about September 15, 1987, ELLIS AYERS contacted a bettor and gave him the telephone numbers to be used to place wagers for the 1987 football season.

8. On or about September 28, 1987, a bettor called (404) 388-0566 and placed wagers on sporting events.

9. On or about October 6, 1987, RICHARD PIERCE was contacted at (404) 388-0566 and accepted wagers on sporting events.

10. On or about November 7, 1987, a telephone call was placed from (404) 388-0274 to (404) 976-5000 listed to Atlanta Sports Line.

11. On or about November 21, 1987, bettor number 42 contacted RICHARD PIERCE at (404) 388-0566 and PIERCE discussed gambling activity with the bettor.

12. On or about November 21, 1987, LESTER ELLENBURG telephoned (404) 388-0566 and spoke with RICHARD PIERCE about gambling activity.

13. On or about November 21, 1987, Shirley McCormack placed a telephone call to (404) 388-0274 and received information on gambling activity.

14. On or about November 21, 1987, a telephone call was placed from 2782-B Country Court, Conyers, Georgia to 835 Briar Creek Court, Conyers, Georgia and gambling activity was discussed.

15. On or about November 22, 1987, LESTER ELLENBURG placed a telephone call to (404) 388-7119 located at 2782-B Country Court, Conyers, Georgia and received information on gambling activity.

16. On or about November 22, 1987, Shirley McCormack placed a telephone call to (404) 388-0274 and received information on gambling activity.

17. On or about November 22, 1987, a telephone call was placed from 2782-B Country Court, Conyers, Georgia to 835 Briar Creek, Conyers, Georgia and gambling activity was discussed.

18. On or about November 23, 1987, a bettor contacted RICHARD PIERCE at (404) 388-0274 and PIERCE discussed gambling activity with the bettor.

19. On or about November 23, 1987, a telephone call was placed from 2782-B Country Court, Conyers, Georgia to 835 Briar Creek Court, Conyers, Georgia and gambling activity was discussed.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

Between on or about July, 1987 and November 23, 1987, the exact dates being unknown to the Grand Jury, in the Northern District of Georgia, and elsewhere, the defendants, JOHN LESTER ELLENBURG, a/k/a Lester Ellenburg, ELLIS M. AYERS, and RICHARD M. PIERCE a/k/a Tennessee, aided and abetted by each other, and others, did conduct, finance, manage, supervise, direct and own all or part of an illegal gambling business which was in violation of the law of the State of Georgia, involved five or more persons and had been in continuous operation for a period in excess of thirty days or had gross revenue of $2,000 in a single day, in violation of Title 18, United States Code, Section 1955(a).

COUNT THREE

That during the month ending September 30, 1987, in the Northern District of Georgia, the defendants, JOHN LESTER ELLENBURG, a/k/a Lester Ellenberg, ELLIS M. AYERS, and RICHARD M. PIERCE, a/k/a Tennessee, aided and abetted by each other, and others, had and received taxable wagers; that upon said taxable wagers there was a substantial excise tax due and owing to the United States of America; that well knowing and believing the foregoing facts, the defendants did willfully attempt to evade and defeat said excise tax by failing to make a Form 730 (Tax on Wagering), also known as a wagering excise tax return, on or before October 31, 1987 as required by law, to any proper officer of the Internal Revenue Service, by failing to pay to the Internal Revenue Service said excise tax, by maintaining and conceal-

ing records on gambling activity at an off site location, by concealing and attempting to conceal the identities of individuals involved in gambling activity through the use of code names and numbers, by concealing and attempting to conceal the location of offices involved in gambling activity, and by destroying and attempting to destroy gambling records, in violation of Title 26, United States Code, Section 7201.

COUNT FOUR

That during the month ending October 30, 1987, in the Northern District of Georgia, the defendants, JOHN LESTER ELLENBURG, a/k/a Lester Ellenburg, ELLIS M. AYERS, and RICHARD M. PIERCE a/k/a Tennessee, aided and abetted by each other, and others, had and received taxable wagers; that upon said taxable wagers there was a substantial excise tax due and owing to the United States of America; that well knowing and believing the foregoing facts, the defendants did willfully attempt to evade and defeat said excise tax by failing to make a Form 730 (Tax on Wagering), also known as a wagering excise tax return, on or before November 30, 1987 as required by law, to any proper officer of the Internal Revenue Service, by failing to pay to the Internal Revenue Service said excise tax, by maintaining and concealing records on gambling activity at an off site location, by concealing and attempting to conceal the identities of individuals involved in gambling activity through the use of code names and numbers, by concealing and attempting to conceal the location of offices involved in gambling activity, and by destroying and attempting to destroy gambling records, in violation of Title 26, United States Code, Section 7201.

COUNT FIVE

That during the month ending November 30, 1987, in the Northern District of Georgia, the defendants, JOHN LESTER ELLENBURG, a/k/a Lester Ellenburg, ELLIS M. AYERS, and RICHARD M. PIERCE, a/k/a Tennes-

see, aided and abetted by each other, and others, had and received taxable wagers; that upon said taxable wagers there was a substantial excise tax due and owing to the United States of America; that well knowing and believing the foregoing facts, the defendants did willfully attempt to evade and defeat said excise tax by failing to make a Form 730 (Tax on Wagering), also known as a wagering excise tax return, on or before December 31, 1987 as required by law, to any proper officer of the Internal Revenue Service, by failing to pay to the Internal Revenue Service said excise tax, by maintaining and concealing records on gambling activity at an off site location, by concealing and attempting to conceal the identities of individuals involved in gambling activity through the use of code names and numbers, by concealing and attempting to conceal the location of offices involved in gambling activity, and by destroying and attempting to destroy gambling records, in violation of Title 26, United States Code, Section 7201.

COUNT SIX

That during the fiscal year ending June 30, 1987, in the Northern District of Georgia, the defendants, JOHN LESTER ELLENBURG, a/k/a Lester Ellenburg, ELLIS M. AYERS, and RICHARD M. PIERCE a/k/a Tennessee, were involved in the business of accepting and receiving wagers for or on behalf of themselves or others; that by reason of such activity they were required by law on or before July 1, 1986 to make a Form 11-C (Special Tax Return and Application for Registry-Wagering), also known as a wagering occupational tax return, to any proper officer of the Internal Revenue Service; and that well knowing and believing all of the foregoing, they did willfully fail to make said Form 11-C, in violation of Title 26, United States Code, Section 7203.

COUNT SEVEN

That during the fiscal year ending June 30, 1988, in the Northern District of Georgia, the defendants, JOHN LESTER ELLENBURG, a/k/a Lester Ellenburg, ELLIS M. AYERS, and RICHARD M. PIERCE a/k/a Tennessee, were involved in the business of accepting and receiving wagers for or on behalf of themselves or others; that by reason of such activity they were required by law on or before July 1, 1987 to make a Form 11-C (Special Tax Return and Application for Registry-Wagering), also known as a wagering occupational tax return, to any proper officer of the Internal Revenue Service; and that well knowing and believing all of the foregoing, they did willfully fail to make said Form 11-C, in violation of Title 26, United States Code, Section 7203.

A TRUE BILL

/s/ Charlene Childers
Foreperson

/s/ Gerrilyn G. Brill
for ROBERT L. BARR, JR.
United States Attorney

/s/ Robert F. Schroeder
ROBERT F. SCHROEDER
Assistant United States Attorney

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

Case Number CR 1:89-CR-356-02-ODE

UNITED STATES OF AMERICA

v.

ELLIS M. AYERS

Defendant.

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

[Filed Oct. 18, 1990]

The defendant, ELLIS M. AYERS, was represented by Herbert Shafer, Esq.

The defendant was found guilty on count(s) 1 through 7 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

Title & Section	Nature of Offense	Count Number(s)
18 USC 371	Conspiracy to Operate a Gambling Business; Evading Federal Wagering Excise Tax; Failing to File Special Tax Return.	1
18 USC 1955	Owning and Operating all or part of and Illegal Gambling Business	2
26 USC 7201	Willfully failing to file Form 730, (Wagering Excise Tax Return) and to Pay Wagering Excise Tax	3, 4 & 5
26 USC 7203	Willfully failing to file Form 11-C (Special Tax Return and Application for Registry—Wagering	6 & 7

As pronounced on 10/12/90, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of $300.00, for count(s) 1-7, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 16 day of October, 1990.

/s/ [Illegible]
United States District Judge

Defendant's SSAN: 257-46-2455

Defendant's Date of Birth: 12/10/36

Defendant's address: 3840 Troupe Smith Rd.,
Conyers, GA 30208

Defendant: ELLIS M. AYERS

Case Number: CR 1:89-CR-356-02-ODE

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of seventy-five (75) months.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons when notified.

RETURN

I have executed this Judgment as follows:

_____

_____

_____

Defendant delivered on —— to —— at ——, with a certified copy of this Judgment.

_____

United States Marshal

By _____

Deputy Marshal

Defendant: ELLIS M. AYERS

Case Number: CR 1:89-CR-356-02-ODE

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If ordered to the custody of the Bureau of Prisons, the defendant shall report in person to the probation office in which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.

3. The defendant shall not own or possess a firearm or destructive device.

4. The defendant shall permit access to any and all financial information by the U.S. Probation Office.

5. The defendant shall cooperate fully with the Internal Revenue Service in pay all taxes involved in the instant offense.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment:

1) The defendant shall not leave the judicial district without the permission of the court or probation officer.

2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.

3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.

4) The defendant shall support his or her dependents and meet other family responsibilities.

5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.

6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.

7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.

8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.

9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.

10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.

11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history of characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant: ELLIS M. AYERS

Case Number: CR 1:89-CR-356-02-ODE

FINE

The defendant shall pay a fine of $75,000.00. This fine includes any costs of incarceration and supervision.

This fine (plus any interest required) shall be paid in full immediately or as directed by the Probation Office.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.